



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal No. 08 MJ 8553 PCL
	)	
Plaintiff,	)	
	)	DETENTION ORDER
v.	)	
	)	
Rafael YANEZ- Hernandez	)	
	)	
Defendant.	)	

A. **Order For Detention**

After conducting a detention hearing pursuant to 18 U.S.C. §3142(f) of the Bail Reform Act, the Court orders the above named defendant detained pursuant to 18 U.S.C. §3142(e) and (i).

B. **Statement of Reasons For the Detention**

The Court orders the defendant's detention because it finds:

  X   By a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required.

       By clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

C. **Findings of Fact**

The Court's findings are based on the evidence which was presented in Court and that which was contained in the Pretrial Services Report, and includes the following:

  X   (1) Nature and circumstances of the offense charged:

  X   (a) The crime:

8 USC 1326 Being a Deported Alien and Found in the United States

is a serious crime and carries a maximum penalty of 20 years

       (b) The offense is a crime of violence.

       (c) The offense involves a narcotic drug.

\_\_\_\_\_ (d) The offense involves a large amount of controlled substances, to wit:

\_\_\_\_\_

  X   (2) The weight of the evidence against the defendant is high but is the least significant factor.

  X   (3) The history and characteristics of the defendant including:

  X   (a) General Factors:

\_\_\_\_\_ The defendant appears to have a mental condition which may affect whether the defendant will appear.

\_\_\_\_\_ The defendant has no family ties in the area.

\_\_\_\_\_ The defendant has no steady employment.

  X   The defendant has no substantial financial resources or bond proposals.

\_\_\_\_\_ The defendant is not a long time resident of the community.

  X   The defendant does not have any significant community ties.

\_\_\_\_\_ Past conduct of the defendant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ The defendant has a history relating to drug abuse.

\_\_\_\_\_ The defendant has a history relating to alcohol abuse.

  X   The defendant has a significant prior criminal record.

\_\_\_\_\_ The defendant has a prior record of failure to appear at court proceedings.

\_\_\_\_\_ The defendant has a prior record of probation, parole or supervised release violations and/or revocations.

\_\_\_\_\_ (b) At the time of the current arrest, the defendant was on:

\_\_\_\_\_ Probation

\_\_\_\_\_ Parole

\_\_\_\_\_ Release pending trial, sentence, appeal or completion of sentence.

\_\_\_\_\_ (c) Other Factors:

  X   The defendant is an illegal alien and is subject to deportation.

1                   \_\_\_\_\_ The defendant is a legal alien and will be subject to deportation if  
2 convicted.

3                   \_\_\_\_\_ Other: \_\_\_\_\_  
4 \_\_\_\_\_

5                   \_\_\_\_\_ (4) The nature and seriousness of the danger posed by the defendant's release are as  
6 follows: \_\_\_\_\_  
7 \_\_\_\_\_

8                   \_\_\_\_\_ (5) Rebuttable Presumptions

9                   In determining that the defendant should be detained, the Court also relied on the  
10 following rebuttable presumptions(s) contained in 18 U.S.C. §3142(e) which the  
11 Court finds the defendant has not rebutted.

12                   \_\_\_\_\_ (a) That no condition or combination of conditions will reasonably assure the  
13 appearance of the defendant as required and the safety of any other person and the  
14 community because the Court finds that the crime involves:

15                   \_\_\_\_\_ (A) A crime of violence; or

16                   \_\_\_\_\_ (B) An offense for which the maximum penalty is life imprisonment or  
17 death; or

18                   \_\_\_\_\_ (C) A controlled substance violation which has a maximum penalty of 10  
19 years or more; or,

20                   \_\_\_\_\_ (D) A felony after the defendant had been convicted of two or more prior  
21 offenses described in (A) through (C) above, and the defendant has a prior  
22 conviction for one of the crimes mentioned in (A) through (C) above which is less  
23 than five years old and which was committed while the defendant was on pretrial  
24 release,

25                   \_\_\_\_\_ (E) A felony that is not otherwise a crime of violence that involves a  
26 minor victim or that involves the possession or use of a firearm or destructive  
27 device, or any other dangerous weapon, or involves a failure to register under §  
28 2250 of Title 18, United States Code.

1 \_\_\_\_\_ (b) That no condition or combination of conditions will reasonably assure the  
2 appearance of the defendant as required and the safety of the community because  
3 the Court finds that there is probable cause to believe:

4 \_\_\_\_\_ (A) That the defendant has committed a controlled substance violation  
5 which has a maximum penalty of 10 years or more.

6 \_\_\_\_\_ (B) That the defendant has committed an offense under 18 U.S.C.  
7 §924(c) (uses or carries a firearm during and in relation to any crime of violence,  
8 including a crime of violence, which provides for an enhanced punishment if  
9 committed by the use of a deadly or dangerous weapon or device).

10 D. **Additional Directives**

11 IT IS ORDERED that the defendant be committed to the custody of the Attorney General or his  
12 designated representative for confinement in a corrections facility separate, to the extent practicable,  
13 from persons awaiting or serving sentences or being held in custody pending appeal. The defendant  
14 shall be afforded a reasonable opportunity for private consultation with his counsel.

15 While in custody, on order of a court of the United States or on request of an attorney for the  
16 government, the person in charge of the corrections facility shall deliver the defendant to a United States  
17 Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance  
18 stipulated to by defense and Government counsel.

19 IT IS SO ORDERED.

20 DATED: JUNE 18, 2008

21   
22 PETER C. LEWIS  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28